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CAROTAR 2020 - THE NEW NORMAL FOR PREFERENTIAL TARIFF CLAIMS

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“The vagaries of the monsoon are less unpredictable than the whimsical changes in our tax laws”

The above quote of Mr. Nani A. Palkhivala has been a reflection of the state of affairs of the Indian Taxation system that strongly believes that citizen exists for the state and not the state for the citizen. The latest in series of such taxation amendments is the introduction of regulations to Administer the Rules of Origin under the Trade Agreements. Introduced with a noble objective, these regulations have surrounded vagueness and complex implementation.

This article is an effort to dissect these regulations and highlight what is in the store for taxpayers claiming preferential tariff on imports.

Background

Preferential Trade Agreements (‘PTAs’) are executed to grant preferential access in cross-border trade. These liberalize trade between two or more countries by granting full / partial abolition of tariff as well as non-tariff barriers. Countries have been signing such trade agreements for long. The Anglo-French Commercial Treaty of 1860 ushered free trade in Europe that lasted until the 1880s. In between the two world wars, countries also resorted to PTAs and the trend continues.

India, being no exception, executed several bilateral / multilateral trade agreements wherein trade in goods attracted preferential tariff treatment. In all cases, the preferential tariff is subject to the fulfilment of ‘originating criteria’ laid out under the Rules of Origin. Till date, submission of Certificate of Origin (‘CoO’) is proof enough of fulfilment of originating criteria. However, lately the Government observed several ‘origin irregularities’ wherein preferential benefits were incorrectly availed.



Interestingly, India is not the only nation to have witnessed such origin irregularities. Over the years, several countries have tackled the issue of deviation from originating criteria in peculiar ways. Guide to Counter Origin Irregularities (Excluding Fraud) by World Customs Organization showcases studies of several nations including Korea, Japan, Australia, Mexico on how they tackled origin irregularities. The checks adopted included placing onus on the importers for proving originating criteria, verification of each input material and its origin, increasing frequency of inspection on exporting companies and so on.

Despite a detailed verification processes laid out under the Rules of Origin, India seldom adopted any measure to check preferential tariff treatment, putting domestic industry to a risk.

With this background in mind, the Finance Act, 2020 saw the introduction of a new chapter in Customs Act, 1962 (‘Customs Act’) viz. Chapter VAA – Administration of Rules of Origin under Trade Agreements which sought to put stringent checks on the preferential tariff claimed by importers. In pursuance to the same, a

new set of rules have been notified vide *Notification No. 81/2020-Customs (NT) dated August 21, 2020* namely Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('CAROTAR 2020') which shall be made applicable from September 21, 2020.

CAROTAR 2020 gives elaborate powers to the customs authorities to verify the originating criteria in case of preferential tariff claims. They also shift the onus on the importer to furnish requisite information as and when sought in respect of imported good.

Features of CAROTAR 2020

- **Declarations on bill of entry:** Any importer claiming preferential tariff benefit must declare additional information relating to originating criteria on bill of entry like originating criteria fulfilled, direct shipment etc.
- **Possession of information:** Importers need to maintain sufficient information relating to origin of imported goods in Form I. This information needs to be maintained for 5 years from date of filing of bill of entry. The information includes details regarding production process of imported good, its originating criteria, details of origin of each originating input material etc.
- **Verification from importers:** During customs clearance or thereafter, the proper officer can seek information or supporting documents from importer if he has reasons to believe that originating criteria is not met. Importer is obligated to furnish such information within 10 working days.
- **Verification from Issuing Authority:** Where proper officer is not satisfied with information provided by importer, he can cross-check veracity of CoO from its Verification Authority (i.e. authority in exporting country designated for responding to verification requests).
- **Denial of preferential benefit:** Proper officer can deny benefit of preferential tariff where importer or Verification Authority fails to respond or provides incomplete information regarding origin of product. This benefit can be denied for all identical goods imported from same exporter / producer.



Challenges ahead

Despite the logical intent to curb origin irregularities, the compliance of CAROTAR 2020 can be a daunting task for importers claiming preferential tariff. The detailed information regarding imported goods including the production process, input material would be challenging to obtain from the overseas supplier. CAROTAR 2020 also do not prescribe the documents that importers need to maintain to support the information, giving an avoidable privilege to the customs authorities.

Also, the past international trend shows that the Verification Authorities in most of such investigations fail to respond. Thereby, putting importers in a precarious situation.

Besides all these, CAROTAR 2020 does not throw any light as to the onus of the customs authorities in maintaining confidentiality of the information sought.

Conclusion

Covid-19 had an adverse impact on international trade with businesses. Imposition of such stringent measures at this time would further slow-down the trade. In addition, denial of preferential tariff in the given state of affairs would add to the cost importers who are still trying to recover from losses incurred during the pandemic.

Thus, it becomes imperative on the Government to check the implementation of CARORAR 2020, in such a way that the bureaucracy at the customs do not adversely affect the trade.

It can be rightly said the 'new normal' for imports under preferential tariff claims comes with several protection gears and importers would need to comply with them to ensure a safe sail through.

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